

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
RITANI, LLC, : 11-CV-08928 (RWS)  
:  
Plaintiff, :  
v. :  
AGHJAYAN, et al., : 500 Pearl Street  
: New York, New York  
:  
Defendants. : March 9, 2018  
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE GABRIEL W. GORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: CAMERON S. REUBER, ESQ.  
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1 THE CLERK: In the matter of Ritani v. Aghjayan,  
2 docket number 11-CV-8928. Counsel, state your name for the  
3 record.

4 MR. REUBER: Good afternoon, Your Honor. Cameron  
5 Reuber for Ritani.

6 MR. LAUIRCELLA: Good afternoon, Your Honor. Michael  
7 Lauircella from Archer & Greiner for the defendants.

8 THE COURT: Okay. Welcome everyone. You can be  
9 seated if you're not speaking.

10 We're here based on a letter dated the 8<sup>th</sup> from the  
11 plaintiff and responsive letter dated January 22<sup>nd</sup>. So I guess  
12 I'll hear from you, Mr. Reuber. Go ahead.

13 MR. REUBER: Your Honor, the last time we were here  
14 we indicated that the Edgewater facility contained documents  
15 that were relevant to this case that weren't previously  
16 produced. Defendants disputed that in a letter, docket number  
17 226, Page 2, bottom paragraph regarding Edgewater facility data  
18 storage.

19 THE COURT: Somehow it's a little hard to hear you  
20 maybe because you're looking down or --

21 MR. REUBER: Sure. Is that easier? The  
22 representation to the Court is there is no additional  
23 information, no additional relevant information for defendants  
24 to produce from data storage at the Edgewater facility that has  
25 not already been produced.

1           Your Honor decided to resolve the dispute between the  
2 parties regarding which side was right by allowing us five  
3 Boolean searches. We've conducted four of them and we have  
4 discovered that not only were there additional documents that  
5 were not produced by any party in this case previously, at  
6 least as far as we're concerned, there's still a dispute  
7 regarding --

8           THE COURT: Party as opposed to non-party?

9           MR. REUBER: As opposed to defendants. There has  
10 been --

11          THE COURT: No, no, no. A party as opposed to a non-  
12 party.

13

14          MR. REUBER: As opposed to a non-party, yes, Your  
15 Honor. There is a third party, Alexon [Ph.], who is a form of  
16 business party of the defendants who's come forward with  
17 information voluntarily and has made a partial production with  
18 regard --

19          THE COURT: So is it the case that the Boolean search  
20 didn't recover anything that haven't already been produced by  
21 parties and non-parties? Or is that not the case?

22          MR. REUBER: Your Honor, there was these two dozen  
23 emails that were not previously produced in this case as far as  
24 we're concerned.

25          THE COURT: Two dozen.

1           MR. REUBER: Yes. To our knowledge, at least two  
2 dozen. There continues to be more. It's a very large  
3 production and we're steadily going through it.

4           THE COURT: Oh, it's not done?

5           MR. REUBER: It's not done, which is part of the  
6 reason that we're here. Part of the relief that I'm asking for  
7 is the -- because what we're having to do is we're having to  
8 compare the current production which has conversation data with  
9 prior production which is basically just tiffs. So there's no  
10 way to de-dupe it easily. We have to effectively when we find  
11 a document we think we've never seen before, we have to find  
12 words from that document, go back to a different database on a  
13 prior production and try to search for it using that  
14 methodology and it's very time consuming which is why we've  
15 only been able to find a certain small amount just yet.

16           But beyond the individual emails, there was the zero  
17 byte file which started this whole thing off which is why we  
18 started pursuing it. Hundreds of those zero byte files were in  
19 uncorrupted form at Edgewater and they have been from the  
20 start. We didn't have to go through any of that. They could  
21 have just gone to Edgewater, copied the files, and handed them  
22 over to us. Or better yet, they could have included it in the  
23 original production and obviated the whole mess.

24           THE COURT: Okay. Let's just try to focus on what  
25 your request is right now. So I mean, you know, if someone

1 could push a button and give you this material it would be  
2 easy. Defendants are claiming a burden. They don't tell me  
3 what it is. So maybe I should turn to them. Very vague --  
4 I'll come back to you. Very vague, Mr. Lauircella. I'm told  
5 there's burden and expense but I have no idea what it is.

6 MR. LAUIRCELLA: Your Honor, what the request for  
7 this conversation ID metadata is essentially that all of the  
8 prior discovery that occurred in this case over the last four  
9 years would need to be reprocessed, re-reviewed, redone --

10 THE COURT: Whoa, whoa. Re-reviewed? We're talking  
11 about -- why would it be re-reviewed?

12 MR. LAUIRCELLA: Because we would -- the discovery  
13 would need to be re-collected with this metadata. It's not as  
14 simple as hitting -- if the metadata existed in the documents  
15 we had, this one specific field and we could hit a button and  
16 produce it, we would. But the documents would have to be re-  
17 collected with this specific metadata field. The thing that --

18 THE COURT: Now you're good. It was the re-review  
19 part that made no sense.

20 MR. LAUIRCELLA: Okay. So I think with respect to  
21 this field, this field, metadata field, was never brought up in  
22 the past --

23 THE COURT: Why don't you answer my question? I'll  
24 accept that it's not a push of a button and I'm not interested  
25 in getting to the issue of whether they requested it before

1 because they didn't have a reason before. They have a reason  
2 now based upon the allegation that there's material that's  
3 being produced that should have been produced before. It was  
4 destroyed or whatever else happened to it. So here's the four  
5 words, five words I'm wondering about. Extremely expensive and  
6 time consuming. Based on that I'm supposed to find there's a  
7 burden to you. So I need details.

8 MR. LAUIRCELLA: Well Judge, everything that was done  
9 in the case as far as the discovery of the collection and the  
10 review would need to be redone because --

11 THE COURT: You do it again. You're about to lose  
12 this. If you do that again, I'm about to order it. It does  
13 not need to be reviewed in the sense that an attorney needs to  
14 look at each email to see if it's responsive. We're only  
15 asking you to take the emails you've already produced. Why do  
16 you keep telling me about review?

17 MR. LAUIRCELLA: Because the emails -- we don't have  
18 the emails that were already produced with the metadata that  
19 the defendants are looking for attached to it. So my  
20 understanding from talking with our ESI expert or our ESI in-  
21 house support is that the documents would all again need to be  
22 collected from the original hard drive and processed with the  
23 specific metadata field.

24 THE COURT: Okay.

25 MR. LAUIRCELLA: And when that document -- when all

1 that information is collected with that specific metadata  
2 field, it's going to be everything, not what was just produced  
3 but everything that's on those devices that was previously  
4 produced. So then we're going to have, I don't know --

5 THE COURT: So what's the cost?

6 MR. LAUIRCELLA: It's --

7 THE COURT: If you don't know, tell me that. Don't -  
8 -

9 MR. LAUIRCELLA: I don't --

10 THE COURT: You haven't appeared in front of me  
11 before, have you?

12 MR. LAUIRCELLA: I've been here with Mr. Papalia.

13 THE COURT: Right. Okay.

14 MR. LAUIRCELLA: And I've fortunately read all the  
15 transcripts.

16 THE COURT: Okay. Don't say anything unless you know  
17 it to be true. If you don't know, you've got to say I don't  
18 know. Do you understand that?

19 MR. LAUIRCELLA: I do understand.

20 THE COURT: What's the cost going to be?

21 MR. LAUIRCELLA: I cannot give a specific cost. I  
22 know it will be hundreds of man hours.

23 THE COURT: Hundreds of man hours of this vendor?

24 MR. LAUIRCELLA: Or of an attorney going through  
25 documents and figuring out --

1           THE COURT: Why is an attorney going through  
2 documents?

3           MR. LAUIRCELLA: Because we have to figure out what  
4 was previously produced and reproduce it in the same way.  
5 There's been tons of issues in this case with the prior  
6 production and whether there were Boolean searches or whether  
7 they were the attorney reviewing them. It's not as simple as  
8 saying these were the 42,500 pages that were previously  
9 produced and here they are again with this single metadata  
10 field.

11           THE COURT: I'm telling you that makes -- I know you  
12 said it three times now. It still makes no sense to me. It  
13 makes no sense to me that an attorney would do this task. Do  
14 you know exactly what documents you produced? Maybe it's hard  
15 to -- it's a time consuming effort to go back and find them in  
16 the original documents but that's not an attorney task. I mean  
17 it's ridiculous. I mean I'm not going to -- you know, if it  
18 costs \$100,000, I'm not going to make them do it, Mr. Reuber.  
19 If it costs 5,000 I probably would. How do we figure this out?

20           MR. LAUIRCELLA: Can I clarify one point?

21           THE COURT: Sure.

22           MR. LAUIRCELLA: It is the defendant's position that  
23 all of the -- there are no documents that haven't been produced  
24 by either a party or non-party.

25           THE COURT: He denies that.



1           MR. LAUIRCELLA: And if you look at counsel's letter  
2 that was submitted to the Court on January 8 on Page 4 it said,  
3 "Indeed, the primary point of contention between the parties  
4 regarding Edgewater data source is and remains the defendant's  
5 unsupported claim that Edgewater is duplicative of prior  
6 production by defendants. However, upon reviewing the result  
7 of only four of the five allotted Boolean searches, defense  
8 counsel is now pivoting from that prior contention. Now  
9 defense counsel contends that the Edgewater is duplicative of  
10 prior production made by defendants Ritani and/or Alexon." So  
11 counsel and I had at least two separate meet and confers on  
12 this in person. I went to his office in August and with an  
13 initial set of exemplars, and at that time I brought with me  
14 printed out documents with the defendant's Bates stamp on it  
15 and the Alexon or the non-party Bates stamp on it and  
16 plaintiff's Bates stamp on it. After that, another  
17 correspondence was sent in October with what counsel believed  
18 was unproduced documents. It's my recollection, it's not in  
19 any of the letters so unfortunately I can't be prepared today,  
20 but it's my recollection that we agreed on the phone and in  
21 correspondence that all those new exemplars in October had been  
22 previously produced by defendant Alexon on the plaintiff. And  
23 that's why in my letter, our letter on Page 2 --

24           THE COURT: Okay. So you thought he submitted it  
25 before but now he's not. Maybe he can come up with them.

1 Maybe you want to give him a list? Probably don't have it now.  
2 Mr. Reuber, you want to give him a list of things you say were  
3 found and not produced?

4 MR. REUBER: Your Honor, I already have given him a  
5 partial list as of October. I gave him 20 exemplars. The  
6 August meeting was to provide information to the effect of  
7 these documents that were never produced to us by defendants  
8 that were sitting at Edgewater. That was the discussion.

9 THE COURT: By defendants?

10 MR. REUBER: By defendants that were sitting at  
11 Edgewater.

12 THE COURT: Okay. Which is a separate problem. I  
13 understand that.

14 MR. REUBER: So at that point the argument turned to  
15 well you've already got these same documents from Alexon so we  
16 don't have to produce them again from Edgewater. At that point  
17 I went back and I searched for documents that were not part of  
18 the defendant's production. I provided them 20 exemplars and  
19 that's in addition to the zero byte files. So there are  
20 hundreds of documents that were sitting at Edgewater the entire  
21 time that were not produced and weren't subject to discovery  
22 originally.

23 THE COURT: Okay. Right now we're just talking about  
24 email so, this request.

25 MR. REUBER: Sure. Sure. There's at least 20.

1 THE COURT: So that's not the zero byte files.

2 MR. REUBER: No, no. Most of the zero byte were  
3 attachments to emails but yes.

4 THE COURT: Okay. So I don't know what just happened  
5 here but I think we're exactly where we were before which is  
6 you say there are emails that were not produced by a party or a  
7 non-party and the defendants say no. So --

8 MR. REUBER: We have produced with the current Bates  
9 --

10 THE COURT: How am I supposed to justify that?

11 MR. REUBER: We have produced with Bates numbers, I  
12 think it's just as simple as counsel giving us Bates numbers  
13 from the prior production and then we either concede the point  
14 --

15 THE COURT: Okay. Maybe you have to come back. I  
16 don't know. But you also have to come back on this other  
17 issue, right?

18 MR. REUBER: Yes.

19 THE COURT: Which is what is the expense of this  
20 thing? Is it 5,000 or 100,000?

21 MR. REUBER: My ESI expert who doesn't have the  
22 information available to the defendants seems to think it would  
23 be a relatively simple matter because you only have two small  
24 data stores, a laptop hard drive and a desktop hard drive to  
25 identify the data thereon that might be responsive based on

1 what's previously been produced and then just find where the  
2 duplication is.

3 THE COURT: But how do you do that? How do you do  
4 that?

5 MR. REUBER: Well, it's -- I don't claim to be an ESI  
6 expert or understand entirely --

7 THE COURT: Maybe we should do a sample. Maybe you  
8 should pick out 50 of them, make them give you the data for  
9 that. Is that going to solve anything?

10 MR. REUBER: The problem, Your Honor, is their  
11 argument is that it's the entire production is duplicative and  
12 I can't litigate that issue unless I have all the data  
13 available to me. And right now it's going to cost hundreds of  
14 man hours on our part to compare the two without the  
15 conversation ID. If I have that conversation ID data, it's  
16 the work of a few days. If I don't, it's the work of a few  
17 months.

18 THE COURT: Right. But if costs them -- again, I'm  
19 not going to impose an unreasonable cost on them for this  
20 purpose because it's a little bit collateral to a substitute  
21 issue of document production.

22 MR. REUBER: The problem, Your Honor, is it goes  
23 right to the heart of our trade secrets case. Our trade  
24 secrets case, and this is straight from Judge Sweet's  
25 preliminary injunction hearing where he indicates that the

1 disconnect with plaintiff's case at that point was identifying  
2 CAD/CAMS for ring designs that were being sold by the  
3 defendants that we claim are our trade secrets because they  
4 were created during the course of employment by Harout  
5 Aghjayan. Now, the easy way to determine whether or not those  
6 ring designs belong to Ritani because they were made during his  
7 employment period or after the employment period is to identify  
8 the date the CAD/CAM was created. We have at least emails  
9 flying back and forth, including amount the 20 that I just  
10 indicated before were not previously produced to us from the  
11 2008 2000 time frame when Harout Aghjayan was employed by  
12 Ritani. The problem is is that we believe and our theory is  
13 that Harout Aghjayan deleted all of the original CAD/CAMS with  
14 those original dates of creation that would establish that he  
15 was employed by Ritani at the time they were created. At some  
16 point in the future he then uploaded them back to either the  
17 Edgewater facility or some other computer after that, after he  
18 deleted them and prior to giving us the hard drives that we've  
19 been using in this case. And those new CAD/CAMS have new  
20 dates. The problem with those new dates is that there's been  
21 an interceding catalog that --

22 THE COURT: There's been...?

23 MR. REUBER: An interceding catalog. There's a  
24 catalog that came out between him leaving --

25 THE COURT: A catalog, of sales catalog?

1           MR. REUBER: A sales catalog with all these designs  
2 in them, with all the designs that were being used by Ritani.  
3 I'm sorry, used by the defendants prior to the lawsuit being  
4 filed but after Harout leaving his employment. We have not  
5 been able to establish for each of those designs in that  
6 catalog a corresponding CAD/CAM prior to that catalog.

7           THE COURT: You can't do that because you're missing  
8 this metadata?

9           MR. REUBER: We're missing I think the entire  
10 documents. But also we're missing a lot of the emails that  
11 would establish that the CAD/CAMS were part of the emails, were  
12 part of that production.

13           THE COURT: You know, I think I need to think about  
14 the big picture on this. Why is it -- tell me what this  
15 metadata is going to give you. Let me ask you that again. I  
16 know I've read your letter but now I want to think about it  
17 again. What's this metadata going to give you?

18           MR. REUBER: The metadata is going to give us all of  
19 the background information regarding the prior 125,000 emails.  
20 Well not emails, but 125 -- most of the emails in that 125,000  
21 --

22           THE COURT: It's going to tell you when they were  
23 originally created? That's what you're interested in?

24           MR. REUBER: When they were originally created, yes,  
25 and who created them, who they were sent by, who they were sent

1 to.

2 THE COURT: Okay. But the way you phrase it in your  
3 letter, it's as if you want to match it to something.

4 MR. REUBER: We want to match it to the production  
5 from Edgewater.

6 THE COURT: And what's that going to get you?

7 MR. REUBER: We're going to -- I understand at that  
8 point which documents will have been produced previously and  
9 which documents won't have been produced previously so we don't  
10 have to one, cover the same ground we previously have. We can  
11 identify easily the new matter because it's not easy to  
12 identify right now. If we're going through and we find a  
13 document that we currently believe is new, we have to leave the  
14 database that's easily searchable for the new documents, the  
15 Edgewater documents, go back to the prior production which are  
16 only in tiff form, and then search for the prior document to  
17 see if we already have it. And sometimes we do and sometimes  
18 we don't. And if we do, we have to see if it's a zero byte  
19 file and if it's not, then we have to go back to the Edgewater  
20 file and then find it. It's like a jigsaw puzzle trying to  
21 find out what we have, what we didn't have before. And we're  
22 finding new information but it's extremely hard. For every ten  
23 emails that we already have, there's one email that we didn't.  
24 And it's a large labor intensive process that shouldn't have  
25 been occurring in the first place. We shouldn't have had to do

1 it because it shouldn't have been withheld from production.

2 THE COURT: I'm sympathetic to that but I have to  
3 also think about the cost benefit here and I have zero  
4 information on cost and maybe that'll get rectified. Now I'm  
5 just trying to understand the benefits side. So the benefit to  
6 you is that with the metadata you'll be able to instantly match  
7 up to what you already have and find out what is new and you  
8 would presumably only need to look at the new material? Is  
9 that the theory?

10 MR. REUBER: Yes, Your Honor. And I think we could  
11 establish either it would assist us in our spoliation case as  
12 well as --

13 THE COURT: See, that's the part I don't know it's  
14 worth -- I don't know if it was just for spoliation that I  
15 would have them undergo a huge expense. And you've got plenty  
16 of other information on spoliation and you wouldn't need it for  
17 every single email. For that you could do sampling. For that  
18 you could pick out 20 emails from what you already have and say  
19 give us the data from the Edgewater facility as to those  
20 emails. That would solve the spoliation problem, wouldn't it?

21 MR. REUBER: Probably, Your Honor.

22 THE COURT: Yes. So that's out of the picture. We  
23 can solve spoliation very easily with a sample.

24 The other problem I'm sympathetic to relieving your  
25 burden given that it's the defendant's inability to do a proper



1 production that have landed us in this situation. But I do  
2 have to balance that against the cost. I'm trying to figure  
3 out if there's some other way to do it. Have you thought about  
4 another way to do this so that they don't have to -- in other  
5 words, I guess your contention is there's zero emails new in  
6 this new production, right? That's your contention.

7 MR. LAUIRCELLA: Yeah. And I think --

8 THE COURT: And for him it's one out of ten. There's  
9 a disconnect.

10 MR. LAUIRCELLA: But even more than that, I think 20  
11 -- if those 20 were identified and weren't previously produced,  
12 which I don't think is the case, I think there is about 24,000  
13 files or something produced, so it's one out of ten, it's --

14 MR. REUBER: That's what we've been able to go  
15 through to date.

16 MR. LAUIRCELLA: And Your Honor, these documents were  
17 produced June 5, 2017.

18 THE COURT: Well, let's look at it from their point  
19 of view. So you get a production of 10,000 emails, whatever  
20 the number is, and then the other side says to you -- and then  
21 you go through them. And then the other side says to you oh,  
22 you know what, we have other emails and there's a few more we  
23 didn't produce to you before. Here's 11,000 emails. Thank  
24 you. There's 1,000 new ones in there. Good luck. Isn't that  
25 what you're saying has happened?

1 MR. REUBER: Yes, Your Honor. There's also another  
2 small caveat. We only had four Boolean searches so it's not  
3 like we were given free reign to look at the entirety of the  
4 Edgewater facility.

5 THE COURT: You only got -- you're getting a piece of  
6 it.

7 MR. REUBER: Very small shrunken -- we've got a  
8 decent chunk out of that very small --

9 THE COURT: Okay. But I mean it's the same point  
10 which is you need to know what's new in that chunk. That's all  
11 you really want this for.

12 MR. REUBER: Yes. Well, we need to know what was  
13 withheld from us.

14 THE COURT: Well, again, put the spoliation piece  
15 aside. You want to know what's new in this group so you don't  
16 have to go through the entire group again.

17 MR. REUBER: Yes, Your Honor.

18 THE COURT: So that seems reasonable. Except your  
19 position is there's nothing new, right?

20 MR. LAURICELLA: Correct. And Your Honor, when we  
21 were initially discussing this in the summer of 2015, we both  
22 had our ESI experts here and all of our ESI experts were  
23 involved in a protocol to collect the data at the Edgewater  
24 facility and how it was going to be produced and what metadata  
25 was going to be produced with it. And at that time both sides

1 knew that the purpose of the collection and production of the  
2 Edgewater facility was to determine if it was duplicative. And  
3 at no point up until October of 2017 was there any discussion  
4 of this new metadata field that had never previously been  
5 produced, collected, or discussed. And you know, I think the  
6 plaintiffs thought that they were going to get this treasure  
7 trove of new documents that had been withheld. And after  
8 several months of review, there are no new documents that  
9 they've been able to locate. And then this metadata issue came  
10 up. So if this was something that was a concern and necessary  
11 to determine whether or not Edgewater was duplicative of prior  
12 productions, it would have come up in the summer of 2015.

13 THE COURT: All right. Well, this is an interesting  
14 point [indiscernible] their letter which is it would have been  
15 a lot easier to collect this data at the time and that you  
16 didn't request this

17 MR. REUBER: Your Honor, we didn't have reason to  
18 request it at that time because we didn't know what we were  
19 going to get. We were trying to maintain a minimal footprint  
20 in terms of additional outlays to get this information. The  
21 Court was not willing just to give it to us. We had to  
22 effectively prove that there had been spoliation or at least  
23 some lack of diligence with regard to the Edgewater facility in  
24 the first place. We met that burden. And even then, you only  
25 gave us a limited number of Boolean searches. You gave us

1 five. We only used four. We still managed to hit on documents  
2 that should have been produced before. And while we might  
3 argue about whether or not certain emails had been produced in  
4 the past, there is no dispute, or at least there can be no  
5 dispute in my mind regarding the zero byte files.

6 THE COURT: But that's not what you're -- your  
7 request is not about the zero byte files, is it?

8 MR. REUBER: It would capture the zero byte files as  
9 well. It would allow us to very easily, because we've already  
10 got a list of the zero byte files. We can easily match those -  
11 -

12 THE COURT: But now I'm totally confused. I thought  
13 we -- again, take spoliation out of this. I thought we were on  
14 a path where you were telling me I was produced certain set of  
15 documents, I don't want to have to go over them again. I want  
16 to know what's new. The zero byte files you've never been able  
17 to review because there's nothing in them, right?

18 MR. REUBER: Yes, Your Honor.

19 THE COURT: So that's not an issue, is it? You're  
20 getting -- that's easy. If you're getting the actual files,  
21 then that's all new.

22 MR. REUBER: We've only --

23 THE COURT: And you know that, right?

24 MR. REUBER: We've only got some of the zero byte  
25 files because the Boolean searches were only able to capture

1 some of the zero byte files. All of the zero byte files we do  
2 not have.

3 THE COURT: Okay. Well whatever you've gotten, the  
4 metadata isn't going to add anything to it.

5 MR. REUBER: No, Your Honor. The metadata will allow  
6 us to identify -- I'll back up. There are certain zero byte  
7 files that have filenames that are subject to multiple emails.

8 THE COURT: Subject to?

9 MR. REUBER: To multiple emails.

10 THE COURT: What do you mean subject to?

11 MR. REUBER: An email would go from Alexon to the  
12 defendants. It would have the same file. It would come back,  
13 it would be modified going back and forth. The same file --

14 THE COURT: An attachment?

15 MR. REUBER: An attachment.

16 THE COURT: Right.

17 MR. REUBER: Most of the zero byte files are  
18 attachments.

19 THE COURT: Okay.

20 MR. REUBER: So the zero byte file will appear on  
21 multiple emails.

22 THE COURT: Okay.

23 MR. REUBER: If we have the conversation ID data, we  
24 can identify which emails are associated with that file much  
25 easier than if we didn't have the conversation ID data.

1 THE COURT: But at least for those you can -- that's  
2 a limited set.

3 MR. REUBER: It's a limited set. Yes, Your Honor.

4 THE COURT: You could just say for the following 20  
5 emails, or 50, or whatever it is, give me this data, right?

6 MR. REUBER: But it's still a substantial utility and  
7 it --

8 THE COURT: It's still...?

9 MR. REUBER: Substantial utility and it cuts down on  
10 the time it takes to actually acquire the --

11 THE COURT: I'm sorry, it's still --

12 MR. REUBER: Substantial utility.

13 THE COURT: I don't know what you mean by substantial  
14 utility.

15 MR. REUBER: It's a lot easier to do the searching  
16 and it's a lot faster to do the searching on the current  
17 methodology that we have to use with only the tiffs to guide us  
18 because the tiffs don't have any of the user functions that we  
19 would need to do a simple de-dupe.

20 THE COURT: I wasn't talking about de-duping.

21 MR. REUBER: I'm sorry.

22 THE COURT: I'm now completely confused.

23 MR. REUBER: I'm sorry, Your Honor.

24 THE COURT: I was talking about the emails and trying  
25 to work on this and then you said you know what, don't just

1 think about the emails, think about the zero byte files. So  
2 now I'm thinking about the zero byte files and I've forgotten  
3 the emails. I thought the zero byte files are attached to the  
4 emails and I thought the issue with the zero byte files was  
5 that you literally had no file before.

6 MR. REUBER: That was the issue, Your Honor. You're  
7 correct.

8 THE COURT: But now you're getting the file. So  
9 that, unlike the other documents where you didn't know what was  
10 new, you know every zero byte file is new, do you not? What am  
11 I missing?

12 MR. REUBER: Yes, Your Honor, we know that there are  
13 zero byte files at Edgewater.

14 THE COURT: Okay. So getting this metadata zero byte  
15 files doesn't seem that important.

16 MR. REUBER: No, Your Honor, it's not but the point I  
17 was trying to speak to with regard to the zero byte is the  
18 duplication aspect, the duplication element of counsel's  
19 argument where he's saying there's nothing new at Edgewater  
20 that hasn't been produced before. The zero byte file stands as  
21 the exception to that.

22 THE COURT: Right, right, right. And you've gotten  
23 them and those are easily identifiable to you and you don't  
24 need the metadata for the those.

25 MR. REUBER: Correct. We have some of them, some

1 zero byte files based on the --

2 THE COURT: You don't need any -- and you're not  
3 asking for any relief with respect to the zero byte files in  
4 your letter, are you?

5 MR. REUBER: No, Your Honor. We haven't gotten to  
6 that point yet. The entire purpose of this exercise wasn't to  
7 get us everything that we need to go to trial, it was to prove  
8 that there is information at Edgewater that we could use to go  
9 to trial. That was the entire purpose of this exercise.

10 THE COURT: Okay. But let's go back.

11 MR. REUBER: Sure.

12 THE COURT: I'm still working on your first point.

13 MR. REUBER: I'll do better, Your Honor. I'm sorry.

14 THE COURT: That's okay. It could be me. I'm going  
15 to have to keep going through it again and again because we  
16 keep getting distracted or I'm not understanding. I can't tell  
17 which. Let's try it again. You have -- and again, this is  
18 about emails. You were produced a number of emails from the  
19 defendants and from this third party. They were in tiff form  
20 those were?

21 MR. REUBER: Yes, Your Honor.

22 THE COURT: Okay. And you have reviewed them and you  
23 have certain information about them. Again, tell me if I'm  
24 getting the problem wrong. I keep trying this. The problem  
25 now is that they go to Edgewater, they do these searches. They



1 produce a number of emails. And you can't tell whether in this  
2 production there's something new that you haven't already  
3 reviewed.

4 MR. REUBER: Can't tell easily, Your Honor.

5 THE COURT: Can't tell easily.

6 MR. REUBER: Yes.

7 THE COURT: Right. And you want that to -- it would  
8 be fine with you if they said here's 1,000 emails, numbers one  
9 through 900 you already have, 901 to 1,000 are new. Would that  
10 solve your problem if they could do that?

11 MR. REUBER: Yes, Your Honor.

12 THE COURT: Okay. And that seems reasonable to me  
13 that you should get that again given their past production. I  
14 just need to figure out what it's going -- and part of the  
15 problem is I could just say to them you know what, identify the  
16 new ones and if they had a good methodology for doing that you  
17 could have it. They're totally denying there are any new ones,  
18 so ordering them to tell you the new ones is not going to solve  
19 anything because they'll just say there are none I guess. Hold  
20 on. I'll give you a chance. Your solution to this is to say  
21 provide these metadata fields on emails one through 1,000 and  
22 then we can use a computer program that will match them up and  
23 will tell us exactly which of the 1,000 are new, right?

24 MR. REUBER: Yes, Your Honor.

25 THE COURT: Isn't that what's going on?

1 MR. REUBER: That is it.

2 THE COURT: Okay. And their answer to that is it's  
3 going to cost some number that they don't know but they think  
4 is big. And your answer is no, our guy says it's really easy  
5 to do this. Right?

6 MR. REUBER: Yes, Your Honor.

7 THE COURT: That's where we are right now. And I'll  
8 hear from them. But the only solution I can think to this  
9 because I think they do have an obligation to tell you what's  
10 new if anybody can do it without undue burden, is to get a lot  
11 more information about what it would take and it may require  
12 your IT person talking to their IT person and me getting  
13 affidavits and explaining what the expense is. And it may be  
14 that if you say you know it's really cheap, then I'll say okay,  
15 well then they can pay for it and I'll have your guy do it. I  
16 mean I have many options here. But then of course your guy  
17 would have to do it. So he shouldn't start saying it's cheap  
18 unless he can really do it for that because I'm going to expect  
19 it to be done. And if he can't do it for the price he said,  
20 I'm going to expect you people to pay for it. Can't just stop.  
21 So that's sort of where I'm going right now. But let me hear  
22 from defendants because they haven't had a chance to talk.

23 MR. LAUIRCELLA: Judge, there's three things with  
24 respect to this issue that I think you need to consider. First  
25 is the product -- we're talking about the prior production, not

1 the new Edgewater facility,

2 THE COURT: Right.

3 MR. LAUIRCELLA: The metadata that they're looking  
4 for is for the prior production, not Edgewater.

5 THE COURT: Okay. That's the original production.  
6 Yes, go ahead.

7 MR. LAUIRCELLA: Yes. And the conversation ID  
8 metadata is not going to solve the duplication issue with  
9 respect to the documents that were produced by Ritani or third  
10 party Alexon.

11 THE COURT: Oh.

12 MR. LAUIRCELLA: Because we are not going to be able  
13 to give them metadata for documents that we did not produce.  
14 So we would only be able to reproduce --

15 THE COURT: Whoa, whoa, whoa, whoa. They only want -  
16 - they're asking for metadata for the files you produced.  
17 They're asking for metadata for the new production from  
18 Edgewater, right?

19 MR. LAUIRCELLA: No.

20 THE COURT: That's what you're asking for the  
21 metadata on, isn't it?

22 MR. REUBER: No, Your Honor. We're asking for the --  
23 we have conversation ID for the current --

24 THE COURT: For the new.

25 MR. REUBER: For the new.

1 THE COURT: You want them to use it for --

2 MR. REUBER: The old --

3 THE COURT: Okay. For the stuff that's now tiff.

4 MR. REUBER: Yes.

5 THE COURT: Okay.

6 MR. REUBER: For the old stuff that's tiff.

7 THE COURT: All right. I had it backwards but it  
8 doesn't change anything I said. Go ahead. A right. So your  
9 point is you could only do it for your production, not for the  
10 third party's production.

11 MR. LAURICELLA: Correct. And that's not going to  
12 help them. It may provide some assistance but it's not going  
13 to provide this global assistance where you hit one button and  
14 all of a sudden all the new documents come up because there's  
15 going to be, you know, tens of thousands of documents that  
16 Ritani produced and documents that Alexon produced that are  
17 these emails that we say were already in their production that  
18 are now coming from the Edgewater facility. So it's not going  
19 to solve that problem.

20 And second, we -- counsel and I negotiated  
21 extensively the protocol for this Edgewater facility.

22 THE COURT: Okay. Which is what threw me off because  
23 I think -- are you about to tell me that if he wanted the  
24 metadata he could have asked for it?

25 MR. LAURICELLA: Well --

1           THE COURT: But I thought you got it for the  
2 Edgewater stuff you told me. It's now the original stuff that  
3 he needs it for. So the demand is not with respect to the  
4 Edgewater production, it is with respect to the original  
5 production, right?

6           MR. LAUIRCELLA: Well, I think the protocol that we  
7 discussed was for the issue that was a duplication of Edgewater  
8 in the prior production of what was going to occur. And at no  
9 point have we ever discussed having to redo everything.

10          THE COURT: No, no, no, but it had already been done  
11 at that point. You had already done it. It's not like you  
12 could have proceeded differently at that point, right? You had  
13 already produced that original tiff data.

14          MR. LAUIRCELLA: Correct.

15          THE COURT: So even if they had raised it at this  
16 meeting it wouldn't have made any difference.

17          MR. LAUIRCELLA: Well, I think the difference that it  
18 could have made is (A), that was two and a half years ago, that  
19 now we're two and a half years further along in the 2011  
20 litigation. And also, I'm not sure how it would have affected  
21 the initial decision and burden on searching the Edgewater  
22 facility if at that same time the plaintiff said okay, we're  
23 not only going to have to search the Edgewater facility but,  
24 you know, the entire production is going to need to be -- the  
25 original production is going to need to be reproduced with this

1 new metadata.

2 THE COURT: Okay. But again, the labor would be the  
3 same, it's the delay you're complaining about. So what about  
4 the non-party production problem?

5 MR. REUBER: Your Honor, it would be helpful to know  
6 exactly who produced what. And if the defendants have a set  
7 data set and Alexon has a set data set and we can compare the  
8 two, that would still be useful. We have the --

9 THE COURT: I'm not following. Try it again.

10 MR. REUBER: Sure. A large part of --

11 THE COURT: Let me try to frame the problem for you.

12 MR. REUBER: Okay.

13 THE COURT: What I think I heard them say was okay,  
14 even if we gave you -- we took back all those tiff stuff and  
15 gave it back to you with metadata, we could only do it for our  
16 stuff, not Alexon stuff. So you would have a match but it  
17 would only give you information with respect to our production.

18 MR. REUBER: And that's accurate and that would be  
19 sufficient for our purposes going to trial because for one  
20 problem we have with Alexon is if Alexon doesn't come to trial,  
21 we have an issue in terms of admissibility as to what he has  
22 submitted with us, or to us. And if it comes from defendant's  
23 files, we don't have that same issue.

24 THE COURT: Have you tried asking them to admit that  
25 all the emails from them to Alexon and back and forth are

1 authentic?

2 MR. REUBER: Yes, Your Honor.

3 THE COURT: And have they admitted it?

4 MR. REUBER: No, Your Honor.

5 THE COURT: Why haven't you admitted it? That may  
6 affect what I do here.

7 MR. LAURICELLA: I'm not aware -- are we talking  
8 about a request for admission?

9 THE COURT: Yes.

10 MR. LAURICELLA: I'm not aware of any request for  
11 admission since I've been involved in the case.

12 THE COURT: I mean standing here now, and I won't  
13 hold you to it, do you have any reason to doubt that they're  
14 authentic?

15 MR. LAURICELLA: No. And I told counsel that when we  
16 spoke about this issue.

17 THE COURT: Let's assume it's going to get admitted  
18 then. I was literally asking if you had done a request for  
19 admission.

20 MR. REUBER: Yes, Your Honor.

21 THE COURT: You think you did it and they refused?

22 MR. REUBER: I am confident that we submitted  
23 requests for admission regarding this, yes. With prior  
24 counsel. It wasn't with current counsel.

25 THE COURT: Okay. Well why don't you guys after talk

1 this out because this could affect what I did here if they're  
2 refusing to admit it.

3 MR. LAURICELLA: I don't think there's any -- I don't  
4 think there's going to be any issue with the authenticity of an  
5 email that says, you know, [HaroutAghjayan@gmail.com](mailto:HaroutAghjayan@gmail.com), or  
6 whatever the email address is, or Shawndria and Alexon, I don't  
7 think that's ever, to my knowledge, and don't hold me to this,  
8 Your Honor, but I don't understand that to be an issue in the  
9 case.

10 THE COURT: But let's settle this because if the  
11 answer is something different, there could be a lot more burden  
12 placed on you. So let's assume for the moment that they're  
13 going to admit that. So back to you. Tell me why how having  
14 the metadata for the defendant's production is going to be  
15 materially advantageous to you.

16 MR. REUBER: Even if we are only going to be informed  
17 as to the production of the defendants as separate and apart  
18 from the production of Alexon, it's going to tell us the extent  
19 of the lost data associated with defendant's production because  
20 right now that is a large part --

21 THE COURT: We're now back to spoliation.

22 MR. REUBER: We are --

23 THE COURT: And I'm solving your spoliation issue.  
24 I'm going to let you pick 20 emails and get this information at  
25 a minimum. So take spoliation out.



1           MR. REUBER: If spoliation is out of it, Your Honor,  
2 the utility associated with purely the defendant's documents is  
3 going to be limited to not reviewing the same documents twice  
4 and knowing what was produced from Edgewater as opposed to the  
5 previous production and what was not.

6           THE COURT: Okay. So it would at least let you not  
7 have to review things twice to understand what's new from the  
8 defendants. How about this? What if I just order -- tell me  
9 why this would be unreasonable. What if I just ordered you to  
10 identify for him which in your recent production from you have  
11 not already been produced by you? Why would that be -- would  
12 there be anything unreasonable about that or --

13           MR. LAUIRCELLA: Anything in our new production that  
14 wasn't previously produced, I don't --

15           THE COURT: Okay. And your answer is going to be  
16 nothing. And then if it turns out you're wrong on that, then  
17 you're going to be in trouble.

18           MR. LAUIRCELLA: That wasn't previously produced by  
19 us or previously produced by --

20           THE COURT: No, by you. What is being produced by  
21 you --

22           MR. LAUIRCELLA: By defendants.

23           THE COURT: -- in the Edgewater production that was  
24 not previously produced by you. And I guess you would identify  
25 all the Alexon documents because you would have to plus some

1 documents that were in your possession.

2 MR. LAURICELLA: There would be -- I think we'd have  
3 to go through all of them and compare them to what was  
4 produced.

5 THE COURT: Right. That's what he doesn't want to  
6 have to do. Why should he have to do it?

7 MR. LAURICELLA: They've been doing it for months.

8 THE COURT: Doing what?

9 MR. LAURICELLA: Reviewing the documents that were  
10 already produced. I don't know how many they've gone through  
11 already. And you know, the contention was that these are --  
12 that there's a whole set of new documents and we wouldn't be  
13 able to tell the Court this wasn't produced without reviewing  
14 them all. And the defendant said -- plaintiffs and we want to  
15 an opportunity to check and we've given them that opportunity.  
16 And now it seems like the burden is shifting back to the  
17 defendants to go through everything.

18 MR. REUBER: Your Honor, if I may?

19 THE COURT: Yes, go ahead.

20 MR. REUBER: I think that's a wonderfully elegant  
21 solution to this problem considering that the defendants are  
22 the ones who have been saying that Edgewater is duplicative for  
23 the last two years.

24 THE COURT: But what if they come back and they just  
25 say no, nothing new?

1           MR. REUBER: If the Court wants to hold a hearing at  
2 that point, if we prove them wrong, I'm more than happy to do  
3 that.

4           THE COURT: I mean you say you can prove them wrong  
5 already.

6           MR. REUBER: Yes, Your Honor.

7           THE COURT: So I think we have to do this in two  
8 parts. First, you need to supply to them the documents you say  
9 were not produced by anybody before. Give them the Bates  
10 numbers. Right? You can do that.

11          MR. REUBER: I've already given them an exemplar.  
12 Are we obligated to give them everything that we found to date  
13 in terms of that we know hasn't been produced? Because we're  
14 still going through the production. Like I said, it's a very -  
15 - we've already identified -- we've already given them all of  
16 the zero byte files previously and we gave them --

17          THE COURT: Well again, we're not talking about zero  
18 byte. I thought we were talking about emails.

19          MR. REUBER: Emails? I've given the 20 exemplars in  
20 October with Edgewater production numbers. They have not  
21 identified any production numbers in prior production that they  
22 gave us.

23          THE COURT: Okay.

24          MR. REUBER: In other words, non-Edgewater.

25          THE COURT: So you've done that already.

1 MR. REUBER: Yes.

2 THE COURT: Do you know what he's talking about?

3 MR. LAUIRCELLA: Yeah. We have a different  
4 understanding about what happened. I know counsel sent me the  
5 email in October with the 20 exemplars. My understanding was  
6 those are 20 exemplars that were not produced by defendants.  
7 And I believe that those were produced. But I know what he's  
8 talking about and I could check that very easily whether or not  
9 those were produced.

10 THE COURT: Well it's the very thing that you keep  
11 denying exists. So is it right or is it wrong? I keep saying  
12 to you was there any production in the new production from  
13 Edgewater that hadn't previously been produced by you or  
14 Alexon. You said no. And now it sounds like you're admitting  
15 there's 20 of them.

16 MR. LAUIRCELLA: No. I know counsel sent me that  
17 letter with 20 and I thought we had multiple conversations  
18 after that where we both agreed that these were produced by  
19 Alexon or Ritani.

20 THE COURT: Oh, I'm sorry. I didn't hear you  
21 correctly. So you need to then supply him with the Bates  
22 numbers of the prior production.

23 MR. LAUIRCELLA: No problem doing that. I think I  
24 went through the first five or ten with him on the phone, with  
25 Mr. Reuber on the phone. And then I said do you want me to

1 still go through or are you satisfied that these were  
2 previously produced? But I have no problem and that's an easy  
3 task.

4 THE COURT: All right. So supply the whole thing  
5 because that's a little bit of a predicate for this whole  
6 thing, Mr. Reuber, is that there is some set of a significant  
7 number of documents that isn't in the group. If you literally  
8 can't find any, then there's a problem with the premise of your  
9 argument.

10 MR. REUBER: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. REUBER: And I believe that we already satisfied  
13 that. But again, the zero byte file issue still exists and  
14 that there are zero byte files in Edgewater that were not  
15 produced to us previously that have now been produced to us.

16 THE COURT: But it seemed like those were very easily  
17 identifiable because you already know --

18 MR. REUBER: Yes, Your Honor.

19 THE COURT: -- what the zero byte files are. So it's  
20 not like -- and you never reviewed them before anyway. My  
21 point is they're easily identifiable so you know you have to  
22 look at those.

23 MR. REUBER: Sure, Your Honor. Absolutely.

24 THE COURT: So that doesn't fit into this category.  
25 Okay. So step one is defendant needs to supply you with Bates

1 numbers of all of those. If in fact can't -- if he can, then  
2 we need to revisit this because unless someone can show me that  
3 there's something new in this new production, then I don't know  
4 that I'm going to put them to any burden to help on this de-  
5 duping effort. Do you understand what I'm saying?

6 MR. REUBER: Yes, Your Honor.

7 THE COURT: So that's step one. So someone needs to  
8 report back on step one. And then I'll give you a hint on step  
9 two. If in fact there are documents that are being produced  
10 from Edgewater that were not previously produced, and of course  
11 they'd have to have some importance, then we need to talk about  
12 who's going to bear this burden of figuring out what's new. In  
13 the IT people will need to talk and they'll need to figure out  
14 what it is you think defendant should be doing, what they think  
15 they need to do to solve this problem and how much it's going  
16 to cost because I can't do this in a vacuum. Okay? So that's  
17 where we are in this first request. Any questions, Mr. Reuber?

18 MR. REUBER: No, Your Honor.

19 THE COURT: Any questions, Mr. Lauircella?

20 MR. LAUIRCELLA: No, Your Honor.

21 THE COURT: Okay. Now I've completely forgotten your  
22 second request. Give me a second to review it.

23 [Pause in proceedings.]

24 THE COURT: Frankly, Mr. Reuber, I didn't really  
25 understand your request, so try it again.

1           MR. REUBER: The long and the short of it, Your  
2 Honor, is that in the 60 days immediately following being  
3 served with lawsuits we have emails that were attached to my  
4 letter indicating that Mr. Aghjayan deleted information off of  
5 the Edgewater facility data stores. This is consistent with  
6 also --

7           THE COURT: That who deleted it?

8           MR. REUBER: We believe it to be Mr. Aghjayan who's  
9 referred to in the email as Mr. Happy. At least that is to the  
10 best of Gevik [Ph.] Cajadorian [Ph.] who is the IT consultant  
11 for the defendants, his understanding.

12          THE COURT: All right.

13          MR. REUBER: And this is consistent also with data  
14 that was devised by our ESI expert who looked at the laptop and  
15 the desktop and determined that file destruction software was  
16 run during that same time period by Mr. Aghjayan. And this is  
17 consistent with Mr. Aghjayan saying that he went to Gevik  
18 indicating that he --

19          THE COURT: That he...?

20          MR. REUBER: He went To Gevik indicating that he had  
21 a virus problem but asked Gevik not to work on it, he was going  
22 to take care of it himself in which case he went and he asked  
23 Gevik what software can I buy that will effectively erase  
24 everything permanently from my desktop? And Mr. Cajadorian  
25 instructed him as to where to go to get that program, and he

1 did. And these two emails -- well, there's four emails, but  
2 there's one from January 30<sup>th</sup> from Mr. Aghjayan's wife and  
3 business partner Shawndria to Gevik indicating at least two  
4 deletions and requests to be restored based on those. our  
5 theory is that he got served with the lawsuits, decided to get  
6 rid of the evidence, and he got rid of something that was  
7 necessary for the business to run. And it was restored. And  
8 we would like copies of everything that was destroyed in the  
9 aftermath, immediate aftermath of being sued.

10 THE COURT: Okay. So let's talk about your request.  
11 You want -- what is it you're asking for exactly?

12 MR. REUBER: We want production of what was destroyed  
13 during that time, what was destroyed or what was recovered.  
14 The requests were done here and it looks like at least one of  
15 them was successful. We don't have verification that the  
16 second one was. But the subject matter of the email indicating  
17 --

18 THE COURT: So you want production of what was  
19 destroyed?

20 MR. REUBER: Yes, Your Honor.

21 THE COURT: How do they produce what's destroyed?  
22 I'm sorry.

23 MR. REUBER: Well, it was -- I'm sorry. What was  
24 restored or --

25 THE COURT: So you want production of the files that



1 were restored?

2 MR. REUBER: Yes.

3 THE COURT: And how do they do that?

4 MR. REUBER: They have at least done it once. I  
5 believe they just go and look at the history for the backup  
6 server, identify the folder that was restored based on that  
7 history and produce that. But we didn't do this work --

8 THE COURT: I mean if you read you guy's letters it's  
9 like you're talking about totally different things. They're  
10 talking about style numbers of 400. I can't even tell what's  
11 going on here. Try this again, Mr. Reuber.

12 MR. REUBER: Sure.

13 THE COURT: I thought you were asking to personally  
14 go and do this yourself. What is the request?

15 MR. REUBER: We would like our IT expert to go and  
16 search and try to recover this information.

17 THE COURT: This information being to figure out what  
18 --

19 MR. REUBER: The document -- the data that was --

20 THE COURT: Hold on. Let me finish.

21 MR. REUBER: I'm sorry, Your Honor.

22 THE COURT: What files were destroyed and restored?  
23 What files were restored which --

24 MR. REUBER: Any discovery we can get regarding the  
25 deletion and/or restoration of files in the 60 days or 60 to 90

1 days immediately following service.

2 THE COURT: Well, I think you have to say what  
3 discovery you want so we can have this in a concrete form.  
4 What is it you're asking for?

5 MR. REUBER: We're asking for our IT expert to search  
6 the Edgewater facility or the current data store that has  
7 already been preserved for information concerning data that was  
8 destroyed in the 90 days immediately following service of the  
9 lawsuit. Destroyed and/or restored.

10 THE COURT: Destroyed or restored.

11 MR. REUBER: Yes.

12 THE COURT: Okay. So what's your response to that?

13 MR. LAUIRCELLA: Your Honor, this comes out of the  
14 protocol that we had negotiated and specifically it's Number 3  
15 in our protocol for the Edgewater facility. And what had  
16 occurred, or what was said to occur in the protocol, is counsel  
17 identified a specific email that was there were 26, 2012 where  
18 Gevik Cajadorian restored a folder to the defendant's computer  
19 and --

20 THE COURT: Which is one of these four emails you  
21 attached.

22 MR. LAUIRCELLA: Yes. And our protocol was for that  
23 specific email of February 26, 2012.

24 THE COURT: Okay.

25 MR. LAUIRCELLA: And in our protocol, our IT expert

1 would attempt to recover that folder and if possible would  
2 produce it to my office for review. And if it was within  
3 styles 100 through 400 it would be produced to Ritani. The  
4 folder and the specific path was identified for plaintiff's  
5 counsel. It is for a style --

6 THE COURT: So you found out what was destroyed or  
7 what was restored?

8 MR. LAUIRCELLA: It was what was -- I guess it was  
9 deleted and then restored.

10 THE COURT: So you only found out this restored file  
11 that had previously been deleted?

12 MR. LAUIRCELLA: Correct. That's all we were looking  
13 for. That's all we were supposed to look for.

14 THE COURT: All right. Go ahead. And you didn't  
15 produce it because it was 400?

16 MR. LAUIRCELLA: It was over 400. And that's exactly  
17 what we had agreed to in our protocol.

18 THE COURT: So would it be enough for you if I told  
19 them to give you the one that they found? It sounds like  
20 that's what you are asking for. What am I missing?

21 MR. REUBER: For the second email. There's two  
22 emails indicating two destructions, two separate destructions.  
23 There's the January and the February. It looks like the  
24 restoration took place only in February according to Gevik.  
25 But there's -- if you look at the four emails, there's two

1 different -- there's two separate chains. And I didn't  
2 initially appreciate this, but through conversation with  
3 counsel I've now determined that there is Monday, January 30,  
4 2012 at 6:39 p.m. which is Shawndria asking Gevik --

5 THE COURT: Yes, I see it, I see it. So that's a  
6 restoration.

7 MR. REUBER: That's a restoration.

8 THE COURT: So you're interested in that restoration.

9 MR. REUBER: Yes.

10 THE COURT: And his answer we already had an  
11 agreement on this. He didn't ask for it.

12 MR. REUBER: But I disagree that we didn't ask for  
13 it. I'm pretty sure I can establish that I asked for it  
14 because I sent him these exact emails indicating this is what I  
15 was looking for.

16 THE COURT: All right. So go ahead.

17 MR. LAURICELLA: Judge --

18 MR. REUBER: And in the protocol --

19 MR. LAURICELLA: -- our protocol explicitly says that  
20 the defendant's ESI expert will make all reasonable effort to  
21 locate the folder restored by Gevik Cajadorian in February  
22 2012. And then in brackets it said the folder appears to be  
23 identified in the February 26, 2012 email.

24 THE COURT: He's quoting from his letter, by the way,  
25 Mr. Reuber.

1 MR. REUBER: Yes, Your Honor. I'm looking it up.

2 THE COURT: So --

3 MR. LAUIRCELLA: And that's what was done. And it  
4 falls outside of 100 through 400. Your Honor has already ruled  
5 that --

6 THE COURT: And then there's also an agreement not to  
7 do styles above 400.

8 MR. REUBER: Pending judicial determination. They've  
9 indicated that styles above 400 are out of this case.

10 THE COURT: No, no, no. Forget what's out of the  
11 case.

12 MR. REUBER: Sure.

13 THE COURT: They say that you have some written  
14 agreement that you were going to ask just for the 26<sup>th</sup> date and  
15 if it came up with a file above 400 they didn't have to give it  
16 to you.

17 MR. REUBER: Well, on Point 6 of their email they  
18 also put in, "But we'll segregate or tag them so they can be  
19 produced --"

20 THE COURT: Hold on. This is Point 6 of the protocol  
21 which I don't have.

22 MR. REUBER: Of the protocol, yes.

23 THE COURT: Okay. It says what?

24 MR. REUBER: "But we'll segregate or tag them so they  
25 can be produced to plaintiff pending judicial resolution of the

1 outstanding dispute." And that is the dispute that --

2 THE COURT: For the ones above 400?

3 MR. REUBER: Yes.

4 THE COURT: Okay. But as to the -- what about the  
5 fact that you didn't ask for this January one and it's not part  
6 of your agreed-upon protocol?

7 MR. REUBER: Defendants -- if we go back to Paragraph  
8 3, defendant's ESI expert will make all reasonable efforts to  
9 look at the folder restored by Gevik Cajadorian in January  
10 2012.

11 THE COURT: But my quote says February 2012. That's  
12 what it says in the letter.

13 MR. REUBER: Well, I have a hole punch unfortunately  
14 that's going through there but --

15 THE COURT: You have what?

16 MR. REUBER: A hole punch, Your Honor. It's taken  
17 out the -- I read that as January 2012. If it says February --

18 THE COURT: And it's in his letter. I assume you  
19 read his letter.

20 MR. REUBER: Yes, Your Honor, I read his letter but  
21 the letter I'm reading now has a hole punch through --

22 THE COURT: Okay. So now you know.

23 MR. REUBER: Now I know.

24 THE COURT: I mean I don't like to disturb parties'  
25 prior agreements. I understand the over 400 thing but --

1 MR. REUBER: Your Honor, my understanding, and I can  
2 go back to the emails, is that when I'm talking about the  
3 restoration of what was here, I didn't segregate the email that  
4 specifically says 215 and 215 done.

5 THE COURT: February 2012 was a mistake on your part.  
6 You meant to include January? Is that your point?

7 MR. REUBER: Yes, Your Honor.

8 THE COURT: This is no burden to you, is it? That's  
9 for you.

10 MR. LAURICELLA: I mean minimal burden. It's our ESI  
11 expert will have to go back and find it if they can find it. I  
12 don't --

13 THE COURT: Okay.

14 MR. LAURICELLA: They didn't look for that one.

15 THE COURT: I don't blame you for relying on the  
16 agreement but on the other hand, this is not worth wasting time  
17 on. So go ahead. I'm going to direct that you find out what  
18 file was referred to by that and produce it to them. And also  
19 produce the other one even though it's above 400. This is not  
20 to be taken as a ruling as to relevance or anything else. But  
21 at this point there's been enough problems with the defendant's  
22 production that I'm not going to start putting a very minor  
23 limitation like this. Any questions about my ruling?

24 MR. LAURICELLA: Your Honor, can I just clarify?

25 THE COURT: Yes.

1 MR. LAURICELLA: Counsel's letter was very broad.  
2 Your ruling is only related to this document that's identified  
3 in Exhibit 24?

4 THE COURT: That's Exhibit 24. Yes, exactly.

5 MR. LAURICELLA: Okay. So we'll make the efforts to  
6 locate that.

7 THE COURT: Locate that and produce it, and produce  
8 the one that you found as a result of Exhibits 25 through 27  
9 notwithstanding the fact that it's over 400 and without  
10 prejudice to any future argument on your part that it lacks  
11 relevance.

12 Okay. What else do we need to do today, Mr. Reuber?

13 MR. REUBER: If I could ask that the efforts made to  
14 locate that be cataloged so that my expert can review?

15 THE COURT: What do you mean?

16 MR. REUBER: There was some issue -- I'm not 100  
17 percent clear on the issue between the ESI experts working  
18 before, but there was some issue before regarding the  
19 methodology used by their current ESI expert that --

20 THE COURT: To figure out what they were referring to  
21 in that email?

22 MR. REUBER: No, Your Honor, in terms of the data  
23 restoration process. There was some dispute --

24 THE COURT: You mean once they find it whether  
25 they're restoring the right file?



1 MR. REUBER: Yes, Your Honor.

2 THE COURT: Okay. Well, you should make your ESI  
3 expert available to explain that to their expert. Okay? I  
4 mean there has to be transparency about all this process.

5 Anything else, Mr. Reuber?

6 MR. REUBER: No, Your Honor. Thank you.

7 THE COURT: From defendant's side?

8 MR. LAUIRCELLA: We don't have anything, Your Honor.

9 THE COURT: Okay. Thank you, everyone.

10 MR. LAUIRCELLA: Thank you, Judge.

11 MR. REUBER: Thank you, Judge.

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1 I certify that the foregoing is a court transcript from an  
2 electronic sound recording of the proceedings in the above-  
3 entitled matter.

4  
5 *Mary Greco*

6 \_\_\_\_\_  
7 Mary Greco

8 Dated: March 24, 2018  
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